IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.25 OF 2006
IN
CRIMINAL APPEAL NO.1102 OF 2005

Mrs. Aruna Bhaskar Misar ...Applicant

V/s.

State through CBI, ACB,
Mumbai & Anr. ...Respondents

Mr.S.R. Chitnis Sr.Counsel i/b. Smt.V.R. Raje for the Applicant.
Mr.J.C. Satpute for Respondent No.1/State.

CORAM : V.M. KANADE, J.

DATED : 28th AUGUST, 2007.

P.C:-

1. Heard learned Senior Counsel Mr.Chitnis for the Applicant and learned APP Mr. Satpute for the State.

2. This is an application for suspension of sentence awarded by the Special Court(Provisions of Prevention of Corruption Act), Thane whereby he has convicted the accused for the offences punishable U/s.7, 13(I)(d) r/w 13(2) of the Prevention of Corruption Act and sentenced to suffer one year and to pay fine of Rs.5,000/- in default to

suffer imprisonment for six months.

3. Learned counsel for the Applicant invited my attention to the charge which was framed against the accused. He submitted that the charge had been framed against three accused and accused No.1 and 3 were acquitted by the Trial Court and the present applicant was convicted for having accepted illegal gratification. He submitted that since the charge of conspiracy leveled against all accused was not proved and charge of accepting illegal gratification against accused No.1 and 3 was also not proved, no case was made out for convicting the present applicant for having accepted the amount of Rs.10,000/-. The Trial Court after having formulated points for consideration, came to the conclusion that point No.4 and 5 have been proved against the present Applicant and accordingly, sentenced was awarded.

4. Learned counsel for the Applicant relied on the judgment of Single Judge of this Court in Criminal Application No.1251 of 2006 in Criminal Appeal No.357 of 1994 dated 22nd December, 2006 delivered by Brother Abhay S. Oka, J. He submitted that this Court in the said

judgment had held that in exceptional cases, the Court has power to suspend the sentence. He submitted that the learned Single Judge had after referring the case of **K.C. Sareen V/s. CBI, Chandigarh reported in (2001)6 SCC 584** came to the conclusion that for the purpose of deciding whether exceptional case is made out, it is necessary to look into the aspects of the case. He submitted that the learned Single Judge had thereafter, considered the material on record and held that exceptional case was made out by the Applicant in the said case and therefore, conviction and sentence of the Applicant was suspended till disposal of the Appeal. He invited my attention to the findings recorded by the Trial Court. He submitted that the Trial Court had held that the complainant had turned hostile and case of the prosecution was not established by the complainant. He further invited my attention to the observations which are made by the Trial Court in respect of another lady officer, namely Smt.Rao. He submitted that evidence of Smt. Rao was not admissible. He invited my attention to the finding recorded by the Trial Court and submitted that said finding was perverse and liable to be set aside.

5. It is not possible to accept the submissions made by the learned counsel for the Applicant. In the present case, it is no doubt true that charge of conspiracy has not been established by the prosecution. However, the Trial Court after having relied on the evidence of panch witness and other witnesses has held that the charge against the Applicant of demanding bribe has been established. In my view, it would not be possible to come to the conclusion that this is an exceptional case which would fall within the exception of Section 489 of Cr.P.C. Apex Court in the case of **K.C. Sareen(Supra)** has observed as under:-

> "11. .....
> .....
> No doubt when the appellate court admits the appeal filed in challenge of the conviction and sentence for the offence under the PC act, the superior court should normally suspend the sentence of imprisonment until disposal of the appeal, because refusal thereof would render the very appeal otiose unless such appeal could be heard soon after the filing of the appeal. But suspension of conviction of the offence under the PC Act, dehors the sentence of

imprisonment as a sequel thereto, is a different matter.

12. Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions. When a public servant is found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved

from such findings by reason of suspension of the order of conviction, it is public interest which suffers and sometimes, even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction, the fallout would be one of shaking the system itself. Hence it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold only(*sic)* public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. It is a different matter if a corrupt public officer could continue to hold such public office even without the help of a court order suspending the conviction.

13. The above policy can be acknowledged as necessary for the efficacy and proper functioning of public offices. If so, the legal position can be laid down that when

> conviction is on a corruption charge against a public servant the appellate court or the revisional court should not suspend the order of conviction during the pendency of the appeal even if the sentence of imprisonment is suspended. It would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision."

6. In the light of law laid down by the Apex Court, in my view, it is not possible to accept the submissions made by the learned counsel for the Applicant. Application is accordingly dismissed. Liberty is granted to the Applicant to file a private paper book. R and P may be called expeditiously. Hearing of the Appeal is expedited. Liberty is granted to the Applicant to apply for a fixed date of hearing after paper book is ready.

V.M. KANADE, J.